

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**KENNETH SHUMATE,
APPELLANT
vs.**

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD79486

DATE: MARCH 28, 2017

Appeal from:

The Circuit Court of Gentry County, Missouri
The Honorable Roger M. Prokes, Judge

Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, Gary D. Witt, Judge and Zel Fischer,
Special Judge

Attorneys:

S. Kate Webber, for Appellant

Gregory L. Barnes, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

KENNETH SHUMATE, APPELLANT

v.

STATE OF MISSOURI, RESPONDENT

WD79486

Gentry County, Missouri

Before Division Three: Victor C. Howard, Presiding Judge, Gary D. Witt, Judge and Zel Fischer, Special Judge

Kenneth Shumate appeals the judgment of the motion court denying his Rule 29.15 motion for postconviction relief without an evidentiary hearing. Shumate sought to vacate his convictions following a bench trial of three counts of first-degree statutory sodomy, six counts of second-degree statutory sodomy, two counts of second-degree statutory rape, and one count of sexual exploitation of a minor and consecutive sentences of three terms of life imprisonment plus fifty-five years. He claims that he received ineffective assistance of counsel when counsel failed to move to suppress all evidence obtained as a result of the warrantless search of the United States Internet Crimes Against Children database that provided law enforcement officers his IP address despite lack of prior individualized probable cause. The judgment is affirmed.

AFFIRMED.

Division Three holds:

(1) The judgment denying Shumate's motion for postconviction relief was entered on the date it was file-stamped and entered on the docket sheet rather than the day it was signed by the judge. The judgment became final thirty days after its entry, and Shumate's notice of appeal filed within ten days after it become final was timely.

(2) Shumate did not have reasonable expectation of privacy in the files he shared on a peer-to-peer network, thus, law enforcement's use of the Internet Crimes Against Children website, which searches publically available information, did not violate the Fourth Amendment. Defense counsel, therefore, had no basis for challenging the procedures used by law enforcement to identify Shumate as the person sharing images of child pornography and was not ineffective for failing to file a motion to suppress.

Opinion by: Victor C. Howard, Judge

Date: March 28, 2017

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